ADMINISTRATION OF JUSTICE

631 The Ibogo had a well-developed legal system with a concept of law quite similar to our own. Most of the law received their sanction from supernatural sages, but new ones could be enacted to meet emergencies. A new law would be formulated by the *Ekpenaba* in council with the *Enabenekwen* and widely announced by him at a special Sabbath. There seems to have been no machinery for the repeal of laws. Unpopular or antiquated ones would simply be allowed to lapse. The more important regulations were known to the entire community, but there were certain individuals who were recognized as especially conversant with the law and from whom litigants would seek advice. In trials, previous decisions were often cited, but I could not discover how binding such precedents were.

632 639 The distinction between civil and criminal cases was clearly recognized. The former consisted of disputes over property. Apparently it was impossible to sue for damages. Criminal actions were brought for theft, murder and witchcraft. Incest, in spite of the very strong feeling against it, was not technically a crime, and neither was mayhem. Actually, deliberate murder and mayhem were so rare that informants were uncertain as to the exact procedure. Fights between male adults were considered disgraceful to both parties and most of the natives had never witnessed one. If one person injured another by accident, or while drunk, the matter was settled informally by an apology and gift to the injured party.

632 639 Minor civil cases were settled by the *Enabenekwen* with the village *chief* presiding. Criminal cases and the more important civil cases, especially those involving persons from different villages, were tried before the *Enabenekwen* of the gens with a number of *Nzobbo* in attendance. All trials were public. The *Ekpenaba* ("chief") of the tribe might attend, but it was always the *Enabenekwen* who gave the verdict, after consultation with the *Nzobbo*. In cases involving persons of different gentes, the litigants would agree to accept the *Enabenekwen* of one or the other gens as judge, or, if the matter was very important, refer the case to the *Enabenekwenbo* ("chief counselor to the king"). If the persons involved belonged to different kingdoms, the plaintiff could appeal to either king to act as judge, but that king's decision had to be generally recognized as just and impartial. If it was not, the loser would refuse to abide by it and his own king would support him, causing war between the kingdoms.

645 In civil cases it was not unusual for the litigants to be represented by counsel. Both parties were allowed to state their case and to call

witnesses. These were not put on oath, but could be informally cross-examined by anyone present. The spectators took part in the trial and their attitude had considerable influence on the Kadoudrivaa's decision, which was final. I was unable to learn how the awards of the court were enforced. There seems to have been no special machinery for this, the pressure of public opinion being sufficient.

Criminal cases dealt with theft, very rarely murder, and witchcraft. Theft was a very serious offense and the thief, if caught in the act, might be killed out of hand. Suspects were tried by the village chief and Fidoudrivaa. They were not allowed representation by counsel and the proceedings seem to have been less formal and more heard than in civil cases. Witnesses were called when possible, but a thief might be convicted on circumstantial evidence alone. If found guilty he was forced to make full restitution and would usually be badly mauled by the spectators and jeered at for a long time afterward. If accused of a second or third offense, the thief would be sent to the Kadoudrivaa of the gens for judgment. This official might fine him to the extent of his property, or have him beaten, or both, but apparently he could not order him sold into slavery, or officially sentence him to death. However, if the culprit died as a result of the beating no one was held responsible. A criminal might appeal from the judgment of the Kadoudrivaa to that of the king, but this was not encouraged. An old offender who did so was likely to be brought in dead, with the explanation that he had tried to escape from his guards on the way. If he reached the king, the case was laid before the Kadoudrivaa, who made a thorough investigation and then submitted it to the king with a recommendation. The king's judgment was final, and if the accused appeared displeased he was fined as for contempt of court. This fine went to the king, as did any other fine levied by him. In most places only the king had the right to pronounce sentence of death.

Murder was so rare that I could learn nothing of the procedure except that the murderer would probably be sent to the king, who would sentence him to death.

Although the Dengo lacked the exaggerated fear of witchcraft which is present in many African tribes, they believed that there were certain persons, called wpomoomy, who caused illness and death by magical means. This was the most serious of all offenses, being considered the equivalent of wholesale murder. An wpomoomy always

lust to be denounced to the authorities by some individual who thereby assumed responsibility. In order that such charges should not be brought casually or without good cause, the accuser was fined a large fee or if the accused established his innocence. This ox was killed and its meat distributed, most of it going to the accused as indemnity.

Suspected sorcerers, unless their guilt was unquestionable, were subjected to some form of *ordeal*, i.e., trial by ordeal. Three forms of this were in use. Two of them, which were not fatal, were also employed for the detection of thieves, although only when the evidence seemed evenly balanced and ordinary procedure had failed.

TRIAL BY ORDEAL.

Geoffrey Johnson describes the ordeal as follows: "The commonest and worst form is called *ashidi-fa*. One heats a flat piece of iron, usually a spade, red hot. The *Awakendriona* examines the tongue of the accused and exorcises him to make sure he has no charms concealed on his person. He then invokes the *Zonotiory* and all the ancestors of the chief, asking them to assist at the ceremony. He asks them to punish the accused severely if he is guilty and to prevent his injury if he is innocent. The *Awakendriona* then picks the iron out of the fire with a pair of tongs and holds it before the victim at a moderate height. The latter opens his mouth and licks it once. After this he is placed in a house and closely guarded. The next day he is brought out and his tongue examined. If there are *buttons or colored patches* he is guilty, and the chief condemns him to death or to a fine according to the *gravity* of his offense.

"*Mangrove-drug.*—Water was boiled in a large pot and a stone fastened to a cord, like a plumb-line. The stone was dropped vertically into the pot, but was not submerged. The cord was attached to a stick which rested across the mouth of the pot so that the stone hung about 5 cm above the water. The suspect's hand was washed and examined to see whether he had any scars on it, also whether it had been rubbed with medicine. After the *Awakendriona* had made the usual invocation, the accused approached the pot and seized the stone from below, plunging his hand into the boiling water. He then plunged his hand into cold water. The hand was bandaged and the accused shut up in a guarded house. The next morning all assembled to see his condition. If there were blisters on the hand he was guilty. If accused of sorcery he was killed on

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the spot, or, if the king was merciful, he was expelled and all his goods seized. 695

"*Milano-rano.*—The Tanala firmly believe that certain crocodiles are endowed with a faculty which makes it possible for them to render justice. They are employed to judge an affair which seems dark. The ceremony is held on the bank of a river inhabited by ferocious crocodiles. Everyone assembles there and keeps silence so as not to frighten the animals. The *Anakandriana* places an open *tandra* [pair of blacksmith's tongs] on the edge of the river and strikes the water three times. He invokes the *Zanahary* and the ancestors, asking that the accused be devoured if guilty and allowed to pass safely if innocent. When he has finished the accused advances, steps over the *tandra* and plunges into the river. He swims to the other bank and back. If he is guilty, the crocodiles take him, if innocent he passes safely. When he gets back all raise a cry of *Vita! Vita!* [Finished!] and the young people plunge into the river to receive him. After the ceremony he returns to his village and his accuser kills an ox to indemnify him."

Although all these ordeals appear severe to a European the natives seem to have submitted to them without much trepidation. There were a fair number of acquittals. An old Menabe informant who had himself undergone the ordeal of the hot spade told me that he had been helped by an *ombiasy*, who rubbed his tongue with an evil tasting root. This produced profuse saliva and as he barely touched his tongue to the iron he was unharmed.

A guilty *mpamosavy* was practically always killed and his goods appropriated by the king. There was no official executioner, the bystanders falling upon the man and spearing him to death. Special offenders were sometimes burned alive. 696

MENABE LEGAL SYSTEM

The legal system of the Menabe was less developed than that of the Ikongo, due to the absence of large political groupings. Nearly all their laws had been handed down from such ancient times that their origin had been forgotten. New laws could be enacted by the *Notables* and chief of the gens, but seem rarely to have been made. Court procedure was less formal and in civil cases the litigants were not represented by counsel, although they would seek advice from persons skilled in the law before coming into court. Evidence was taken as among the Ikongo. In criminal cases there was still less formality, the *Fokonolona* as a whole deciding whether the accused 671 695

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695 was guilty. Fines were rarely levied, thieves being punished by a severe beating and repeated offenses by formal disownment and expulsion from the village. Trial by ordeal was less common than among the Ikongo and the ordeal was administered by an *ombiasy*, not by the village chief. It was used in doubtful cases of theft, but mainly for the detection of *mpamosavy*. The hot spade ordeal was used, also another in which the village *ombiasy* took a chicken belonging to the accused and administered medicine to it, saying: "If so-and-so has committed this crime, die. If he has not, live." If the person was guilty the chicken would die. Guilty *mpamosavy* were killed on the spot. Although the Menabe had much less fear of *mpamosavy* than the Ikongo, one gens, the Zafindiamanana, subjected the whole adult population to an ordeal when the presence of one was suspected. An ox was killed and the *ombiasy* took the liver, cut it into small pieces, and mixed it with water and earth from the village tomb, placing the whole on a spade. While he mixed the ingredients he prayed: "*Zanahary* and *Fahasivy* [ancestral shades], if anyone eating this is an *mpamosavy*, let him die." Everyone then came forward and ate a piece of the liver and the guilty person would die within twenty-four hours. Failure to eat was considered a confession of guilt. Informants from this gens said that they used no other ordeals.

695 177 In general the ideas of formal legal procedure and of trial by ordeal seem to have been least developed among those gentes which had least contact with the more advanced tribes of the coast and plateau. It seems probable that the whole legal complex, at least among the Menabe, was due to outside influence and that originally all cases were settled informally by the village council.